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STATE ARGUES AGAINST HITMAN'S PAROLE  
BOSTON

Rhode Island's attorney general has asked the 1st U.S. Circuit Court of Appeals to keep convicted mob hitman Maurice E. 'Pro' Lerner behind bars until 1989 by overturning a parole eligibility decision.

Lerner, 48, of Brookline, Mass., is serving consecutive life terms in the Rhode Island Adult Correctional Institutions for two 1968 gangland murders. He was convicted in 1970 in the slaying of Anthony Melei and Rudolph Marfeo.

A Superior Court jury in Providence found the victims were gunned down in a Providence grocery two years earlier on orders of the late Raymond L.S. Patriarca, New England's organized crime boss until his death last July 11.

Lerner, now serving time on minimum security work release status, once was linked to a purported CIA plot to have Cuban leader Fidel Castro killed in the 1960s.

Rhode Island Attorney General Dennis J. Roberts II appeared before the appellate court Wednesday to ask that a U.S. District Court decision granting parole eligibility to Lerner be reversed.

Roberts said that even though the Legislature reduced the minimum term for parole eligibility on life sentences from 20 years to 10 years after Lerner's conviction, Lerner must serve 10 years of each sentence for a total of 20 years.

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'Any other conclusion negates the effect of consecutive sentences for life,' Roberts said.

Neither the old law, which set a 20-year minimum, nor the new statute outlined the proper procedure in the case of consecutive sentences, Roberts said. He argued that the new law did not impose a greater punishment than the one in effect when the crime was committed in 1968.

'The eligibility time required under the 1979 Parole Board interpretation and the opinion of the Rhode Island Supreme Court is exactly what Lerner could have expected on the date he committed his crime,' Roberts said.

Robert Bonin, representing Lerner, claimed his client was first told he had to serve 10 years to be eligible for parole, and later informed that the minimum time was 20 years. Bonin said the latter interpretation imposed a greater punishment than Lerner was led to believe, and therefore violated his right to due process.

U.S. District Chief Judge Francis J. Boyle in Providence ruled in January that Lerner was eligible for parole consideration because the state violated the 'ex post facto' clause of the U.S. Constitution. The provision prohibits retroactive application of a law and prevents application of punishment stricter than what was in effect at the time of a crime.

Last May, the Parole Board met in the hospital room of late member Miriam Satterfield and voted to release Lerner this month. Boyle blocked the order in June pending state appeal and Roberts filed suit in Superior Court last month alleging the board acted illegally.

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Roberts claimed the bedside meeting was ''highly irregular'' and was held over the objection of one member who wished to attend but could not. In addition, the release was premature under the law, Roberts said.

Lerner has been held in minimum security at the state prison recently and is involved in a work release program.

In 1978, mobster-turned-federal witness Vincent Teresa linked Lerner to an alleged plot to kill Castro for \$4 million.

In a federal court deposition, Teresa said he was present in the early 1960s when Patriarca and his then No. 1 lieutenant, Henry Tameleo, ''picked Maurice 'Pro' Lerner to do the work.'' At the time, Patriarca called Teresa's claim ''crazy.''